BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
EDWARD BUI HAI, M.D.	)	
.	)	Case No. 800-2013-001552
Physician's and Surgeon's	)	
Certificate No. A 36092	)	
	)	
Respondent	)	
	)	
	)	

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Edward Bui Hai, M.D., for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on August 31, 2017.

IT IS SO ORDERED: August 29, 2017.

Jamie Wright, J.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
EDWARD BUI HAI, M.D.	)	**Case No. 800-2013-001552**
Physician's and Surgeon's Certificate No. A 36092	)	
Respondent	)	

DECISION AND ORDER

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. **First page, Paragraph No. 1, the date is corrected to read "October 14, 2016."**

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 31, 2017.

IT IS SO ORDERED August 1, 2017.

MEDICAL BOARD OF CALIFORNIA

By: _____
Jamie Wright, J.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: EDWARD BUI HAI, M.D., Physician's and Surgeon's Certificate No. A36092, Respondent.	Case No. 800-2013-001552 OAH No. 2016110179

PROPOSED DECISION

This matter was heard by Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on June 6 and 7, 2017.

Randall R. Murphy, Deputy Attorney General, represented Kimberly Kirchmeyer (Complainant), Executive Director of the Medical Board of California (Board).

Edward Bui Hai, M.D. (Respondent) was present and represented himself.

Oral and documentary evidence was received at the hearing. The record was left open until June 12, 2016, to enable Complainant and Respondent to concur as to which exhibits should be sealed and to submit a request for sealing order. A request for sealing order was timely submitted and an order sealing confidential records was issued. The record was closed and the matter was submitted for decision on June 12, 2017.

FACTUAL FINDINGS

1. On October 11, 2016, Petitioner filed the Accusation while acting in her official capacity as the Executive Director of the Board. Respondent filed a timely notice of defense and this matter ensued.

2. On December 8, 1980, the Board issued Physician's and Surgeon's Certificate Number A36092 (Certificate) to Respondent. Respondent's Certificate is scheduled to expire on January 31, 2018.

3. Respondent is a 77-year-old male with multiple medical problems. He specializes in internal medicine. Respondent has several medical issues, including hearing loss, mental deficiencies and macular degeneration.[1]

Issuance of Interim Order of Suspension

4. On August 26, 2016, a petition for issuance, on an ex parte basis, of an Interim Order of Suspension pursuant to Government Code section 11529, was heard. Although Respondent received proper notice of the August 26, 2016 hearing, there was no appearance by or on behalf of Respondent.

5. An interim order suspending Respondent's Certificate was issued and the matter was set for a noticed hearing on September 19, 2016, pursuant to the requirements of Government Code section 11529.

6. Respondent was present at the September 19, 2016 hearing and represented himself. The evidence established that, due to Respondent's physical and cognitive impairments, Respondent was then unable to practice medicine safely, and permitting Respondent to continue practicing medicine would endanger the public health, safety, and welfare. A Petition for Interim Order of Suspension was granted, suspending Respondent's Certificate pending a full administrative determination of Respondent's fitness to practice medicine.

Complainant's Expert - Felicia Briones-Colman, M.D.

7. Felicia Briones-Colman, M.D., prepared a report and testified at the hearing. On October 15, 2015, pursuant to Respondent's written agreements to submit to voluntary mental and physical examinations, Dr. Briones-Colman conducted an internal medicine evaluation of Respondent. The evaluation included a review of a portion of Respondent's medical records and a patient history and physical examination.

8. Dr. Briones-Colman found that Respondent had a number of disabling conditions including profound hearing loss, visual impairment, and probable dementia. She also opined that these conditions and deficits "make it difficult for him to practice medicine effectively." (Exhibit 61, p. 4610.)

9. Respondent was not wearing hearing aids when he was examined by Dr. Briones-Colman. Regarding Respondent's hearing deficit, Dr. Briones-Colman stated that Respondent is profoundly hard of hearing, is "unable to have a normal conversation," and that even when she used hand gestures and raised her voice so that she "was screaming at him, . . . he did not hear all of my questions correctly. At one point he was cupping both of

[1] In 2011, Respondent was diagnosed at Kaiser Permanente with macular degeneration in his right eye and is legally blind in that eye.

his ears with his hands and was still having difficulty understanding what I was saying. His hearing loss makes interacting with staff, pharmacists, other doctors and patients almost impossible." (Exhibit 61, p. 4610.) Her evaluation also "revealed that [Respondent] is legally blind in his right eye . . . [and] clinically shows signs of macular degeneration in that eye." (*Id.*) Dr. Briones-Colman was concerned that Respondent has not received appropriate treatment for macular degeneration.

10. Dr. Briones-Colman's evaluation also "revealed that [Respondent] likely has mild to moderate dementia. The testing showed a change in his mental status that goes beyond his inability to hear and likely is not secondary to his vision loss." (Exhibit 61, p. 4610.) This included an inability to name more than nine animals in a minute, even with coaching, and an inability to accurately draw the face of a clock. Dr. Briones did note that "[o]ther causes of mental status changes can be depression, anxiety, psychosis, or other mental disorders. [However, she] did not feel [Respondent] has any psychological disorders that explain his mental changes. A second possibility is a vitamin B12 deficiency. . . . In the elderly, it is not uncommon for individuals to have some loss of mental function at this level. His hepatitis C infection can also affect mental function. If his creatinine and kidney function has worsened since his last exam in 2013, which is not unreasonable given his uncontrolled hypertension, this could cause reversible mental status deficits." (Exhibit 61, p. 4611.)

11. Dr. Briones-Colman concluded: "It is not safe for [Respondent] to practice medicine at this time. Practicing medicine safely and effectively requires many skills: hearing the patient's history, visually and auditorily examining patients and being able to weigh the risk and benefits of recommending or withholding treatments. [Respondent] has an inability to appropriately obtain auditory and visual input from his patients, co-workers or colleagues. His hearing loss alone puts patients at risk for receiving the wrong medication. His use of a stethoscope is likely impaired. His lack of vision could prevent him from performing a proper physical exam. His judgment, memory and mental status deficits make it difficult for him to process a large amount of complex information in a manner that is necessary to practice medicine. . . . In my opinion, [Respondent] is impaired and it is not safe for him to practice medicine." (Exhibit 61, pp. 4611-4612.)

Complainant's Expert- Keyvan Yousefi, M.D.

12. Keyvan Yousefi, M.D., prepared an expert report (Exhibit 71) and testified at the hearing. Dr. Yousefi reviewed numerous items, including patient records and prescriptions; audio and video recordings of undercover patient visits; declarations; and transcripts of Respondent's Board interviews.

13. Dr. Yousefi established the standard of medical practice in California. A physician must keep accurate and complete medical records and provide ongoing and follow-up medical care, as necessary. The Board has established guidelines for prescribing controlled substances for pain. Before prescribing a controlled substance to a patient, a physician must perform an appropriate medical examination and identify a medical

indication. The physician should consider referring a patient for additional evaluation as necessary to achieve treatment objectives. Complex pain problems may require consultation with a pain management specialist.

14. Dr. Yousefi credibly opined that Respondent committed unprofessional conduct and gross negligence by prescribing multiple controlled substances without an appropriate prior examination or medical indication to patients C.P., T.T., R.L., H.J. and J.K. Respondent prescribed numerous medications to C.P., T.T., R.L., H.J. and J.K. despite those patients having no symptoms of back pain or knee pain at any time. C.P. and T.T. did not complain of anxiety. Respondent proceeded to diagnose these patients with neck pain, low back pain, knee degenerative joint disease (DJD) and chronic obstructive pulmonary disease (COPD), and Respondent prescribed medications for them which were not medically indicated. Respondent's diagnoses of R.L. and J.K. included neuropathy on several encounters. However, there are no symptoms, abnormal neurologic exams or nerve conduction studies to suggest neuropathy. Respondent also failed to order imaging data to confirm the diagnosis of severe knee osteoarthritis in R.L. and J.K. Respondent's prescribing of two high strength opioids and a benzodiazepine drug concurrently without appropriate medical justification for patients C.P., T.T., R.L., H.J. and J.K. put those patients at risk of toxicity and constitutes gross negligence.

15. Dr. Yousefi credibly opined that Respondent's repeated and continuous failure to assess the effects of the prescriptions given to C.P., T.T., R.L., H.J. and J.K. also constitutes unprofessional conduct and repeated negligent acts.

16. Dr. Yousefi credibly opined that Respondent failed to keep adequate records for C.P., T.T., R.L., H.J. and J.K. Respondent's notes for C.P., T.T., R.L., H.J. and J.K., were incomplete, illegible and wholly lacking in required information concerning these patients.

Patient C.P.

17. C.P.[2] is a female undercover officer who was initially evaluated by Respondent on September 30, 2014. Her medications were listed as Vicodin[3] and Aspirin. She presented with a claimed history of low back pain and requested a prescription for Oxycontin.[4]

18. In response to Respondent's questions about her symptoms she denied experiencing back pain, neck pain, knee pain or a history of smoking. Respondent's examination revealed no tenderness in her neck, back or her knees. Her lung exam and

---

[2] Patients are identified by initials to protect their privacy.

[3] Vicodin is an opioid pain management drug that is a brand name for hydrocodone, a ketone derivative of codeine that is about six times more potent than codeine.

[4] Oxycontin is a narcotic opioid agonist and Schedule II controlled substance, with abuse potential similar to morphine.

neurologic exam were marked normal. However, despite the foregoing she was diagnosed with neck ache, low back pain, COPD, knee DJD and was advised to stop smoking. She received prescriptions from Respondent for Norco[5] 10/325 mg #90, Tramadol[6] 50 mg #90, Xanax[7] 1 mg #60, Naprosyn[8] 500 mg #60, Neurontin[9] 600 mg #90 and Baclofen[10] 20 mg #90. Respondent also ordered laboratory blood testing.

19. C.P. was seen by Respondent for follow-up on October 28, 2014, and again requested a prescription for Oxycontin. Respondent did not question her about her neck, back or knee pain, but noted that she had no tenderness in her neck, back or knees. However, she was again diagnosed with COPD, knee DJD, and neck ache. Respondent recommended that she "eat good food" and prescribed Norco 10/325 mg #90, Klonopin[11] 1 mg #60, Baclofen, Neurontin and Naprosyn in the amounts previously prescribed.

20. Respondent committed an extreme departure from the standard of care by prescribing multiple controlled substances without medical indication for patient C.P.

Patient T.T.

21. T.T. is a female undercover officer who was initially evaluated by Respondent on October 28, 2014. She requested a prescription from Respondent for Oxycontin and indicated that she had used Norco borrowed from her friend. T.T. told Respondent that she had no pain on the day of the examination. She was examined by Respondent and reported that she had no tenderness in her back or her knees. However, she was diagnosed by Respondent with neck ache, low back pain, and knee DJD. She was provided prescriptions by Respondent for Norco 5/325 mg #90, Klonopin 1 mg #60, Naprosyn 500 mg, Baclofen 20 mg, and Neurontin 600 mg.

///

///

///

---

[5] Norco is an opioid pain medication formula consisting of acetaminophen and hydrocodone.

[6] Tramadol is an opioid, non-steroidal anti-inflammatory drug.

[7] Xanax is a non-opioid, anti-anxiety medication of the benzodiazepine class.

[8] Naprosyn is brand name for Naproxen-a non-opioid, non-steroidal, anti-inflammatory drug used in the treatment of pain and inflammation.

[9] Neurontin is a non-opioid, anti-seizure medication with strong warnings regarding use as it often produces a risk of suicidal thoughts and behaviors. Warnings also include its interaction with opioid medications.

[10] Baclofen is a muscle relaxant used to treat spasticity of spinal origin, such as multiple sclerosis or spinal cord injuries.

[11] Klonopin is an anti-convulsant and anti-panic agent.

22. T.T. was seen by Respondent for a second visit on December 4, 2014. She requested refills for her medications. Although Respondent did not ask any questions regarding back or knee pain, she told him that she had no tenderness. However, she was diagnosed again by Respondent with neck ache, low back pain, and knee DJD. He advised her to "eat good food." Refills for Norco 10/325 mg #90, Klonopin 1 mg #60, Naprosyn and Neurontin were prescribed by Respondent.

23. Respondent committed an extreme departure from the standard of care by prescribing multiple controlled substances for patient T.T. without medical indication.

Patient R.L.

24. R.L. is a 44-year-old male who first presented to Respondent on January 10, 2014. Respondent's notes for that visit are illegible. Respondent diagnosed R.L. with COPD, a right kidney stone, hypertension (HTN) and knee DJD. Respondent prescribed Norco 10/325 mg #120, Tramadol 100 mg, and Xanax 1 mg #90.

25. R.L. was next seen by Respondent on February 12, 2014, with complaints of low back pain. He was diagnosed by Respondent with a right kidney stone and hypertension. Respondent prescribed Naprosyn 500 mg, Xanax 1 mg, Tramadol 100 mg, and Norco l0/325 mg.

26. R.L. was seen again on March 12, 2014, and was diagnosed with knee DJD and a right kidney stone. He was prescribed Naprosyn 500 mg, Xanax l mg, Tramadol 100 mg, and Norco 10/325 mg.

27. R. L. was seen by Respondent on April 14, 2014 and again he was with knee DJD md a right kidney stone. Respondent prescribed Xanax 1 mg, Tramadol 100 mg, and Norco 10/325.[12]

28. R.L.'s next follow up with Respondent was on May 13, 2014. He was again diagnosed by Respondent with knee DJD and a right kidney stone. Respondent prescribed Xanax 1 mg #90, Tramadol 100 mg #90, and Norco 10/325 mg # 50.

29. R. L. was seen again by Respondent on June 17, 2014, and was diagnosed with severe low back pain, hyperlipidemia, severe knee DID, neck ache, neuropathy, and anxiety. This appears to be the first mention of anxiety, although R.L. had been prescribed Xanax by Respondent for several months prior. The progress notes for this visit state that R.L. could not sleep at night due to severe low back pain; his range of neck motion was decreased to 70 percent; he was noted to have 5+ spine tenderness and 5+ tenderness in his knees with a range of motion decreased to 70 percent. He was diagnosed by Respondent with severe low back pain, severe knee DJD, neck ache, neuropathy, anxiety, and Gastroesophageal reflux

[12] For those prescriptions lacking a quantity (# symbol), Respondent failed to include a quantity on the prescriptions.

disease (GERD). Respondent prescribed Naprosyn 500 mg twice a day, Baclofen 20 mg three times a day, Neurontin 800 mg three times a day, Norco 10/325 mg# 150, Tramadol 100 mg three times a day #90, and Xanax 1 mg twice a day #60.

30. R. L. was seen again by Respondent on July 17, 2014, with complaints of right-sided kidney stone pain, severe knee DJD, severe low back pain, neuropathy, and anxiety. He indicated that he could not sleep due to severe low back pain and knee DJD. His physical examination by Respondent revealed 5+ lumbosacral tenderness and a knee exam revealed a range of motion to 70 percent. He was diagnosed by Respondent with hypertension, hyperlipidemia, severe knee DJD, neuropathy, anxiety, and GERD. Respondent prescribed Tramadol 100 mg. #90, Xanax 1 mg. #90, Norco 10/325 mg #150, Baclofen 20 mg three times a day #90, Naprosyn 500 mg twice a day #60, and Neurontin 600 mg three times a day #90.

31. R. L. was seen on August 15, 2014, with complaints of right kidney stone pain and anxiety. However, his physical examination was unchanged. He was prescribed Norco 10/325 mg #150, Tramadol 100 mg #90, Xanax 1 mg #90, ProAir[13] MDI (Metered Dose Inhaler), and Neurontin 600 mg three times a day.

32. R. L. was seen by Respondent on September 15, 2014 with complaints of severe low back pain, knee DJD, and a right kidney stone. His physical examination by Respondent was essentially unchanged compared to the previous visit. Respondent diagnosed him with right kidney stone pain, severe low back pain, severe knee pain and DJD, neck ache, anxiety and neuropathy. Respondent prescribed Norco 10/325 mg #150, Tramadol 100 mg three times a day #90, Xanax 1 mg #60, and Naprosyn 500 mg twice a day.

33. R. L. was next seen by Respondent on October 15, 2014, with complaints of chronic severe low back pain, neuropathy, neck ache, knee DJD, and a right kidney stone. Respondent prescribed Norco 10/325 mg #150, Tramadol 100 mg #90, and Xanax 1 mg #60.

34. A renal ultrasound was completed on November 12, 2014, revealing renal calculus, two tiny left renal calculi, one tiny right calculi and no hydronephrosis.[14]

35. R.L. was next seen by Respondent on November 14, 2014, with complaints of right kidney stone pain, left knee DJD, severe low back pain, neuropathy and anxiety. His neck showed decreased range of motion to 66 percent and he was diagnosed by Respondent with left knee DJD, neuropathy, and anxiety. Respondent prescribed Norco 10/325 mg #150, Klonopin 2 mg #60, and Naprosyn 500 mg twice a day #60.

///

---

[13] ProAir is an allergy inhaler treatment.

[14] This is an obstructive kidney disease that causes painful swelling of the kidney.

36. R.L. was next seen by Respondent on December 15, 2014, with complaints of neck ache, knee pain, low back pain, and a right kidney stone. He also complained of neuropathy and anxiety. Although his physical exam was essentially unchanged (indicating the information was simply copied from one note to the next) he was diagnosed by Respondent with obstructive sleep apnea, neuropathy, bladder pain, anxiety, knee DJD, kidney stone, severe low back pain and neck ache. Respondent prescribed Robitussin AC, Norco 10/325 mg #150, and Klonopin 2 mg #60.

37. Dr. Yousefi opined that Respondent's progress notes for R.L. are insufficient. Respondent's documentation of subjective data is inadequate. His progress notes fail to indicate whether the patient was responding to treatment. Respondent made the diagnosis of neuropathy on several encounters. However, there were no symptoms, abnormal neurologic examinations or nerve conduction studies to suggest neuropathy. In addition, there was no imaging data to confirm Respondent's diagnosis of severe knee DJD.

38. Respondent's records indicate that the patient was diagnosed by Respondent with a right-sided kidney stone. Dr. Yousefi credibly opined that it is unusual to develop chronic pain from a tiny kidney stone and Respondent failed to refer the patient to a urologist for further evaluation.

39. Respondent prescribed Norco 10/325 mg five times a day and Tramadol 100 mg three times a day for neck pain, back pain and knee pain. Dr. Yousefi noted that there was no indication in the record as to why the patient was not first prescribed Norco 5/325 mg or Tramadol 50 mg. He also noted that Respondent failed to refer the patient to a physical therapist, orthopedist, rheumatologist or a pain management specialist for his condition.

40. For his anxiety disorder, the patient was treated with short acting benzodiazepine. There is no documentation in the medical records as to the patient's response to Xanax. Furthermore, the patient was not treated by Respondent with an anti-depressant, such as a selective serotonin reuptake inhibitor (SSRI), or referred to a psychiatrist. Dr. Yousefi credibly opined that the use of Xanax, in combination with Norco and Tramadol, put the patient at risk for toxicity.

41. Respondent's treatment of R.L. constituted a simple departure from the standard of care in that he did not document the patient's response to controlled medications. Respondent's treatment of R.L. constituted an extreme departure from the standard of care in that he prescribed two high strength opioids and a benzodiazepine drug concurrently for this patient without an appropriate medical justification.

Patient H.J.

42. H.J. is a 58-year-old male first seen by Respondent on February 12, 2014. Respondent also saw H.J. on March 14, 2014, April 10, 2014, May 12, 2014, and June 11, 2014, however, the progress notes for those encounters are illegible.

43. H.J. was seen by Respondent on July 11, 2014, and for the first time it is noted that his vital signs were taken. It is noteworthy that his blood pressure was recorded as 192/100. H.J. complained of low back pain, severe right knee DJD, neuropathy, and anxiety. He indicated that he was unable to walk well due to severe knee pain. His neck range of motion was noted as "decreased" to 64 percent. H.J. was noted to have 5+ lumbar spine tenderness and his deep tendon reflexes were 2+. On this visit he was ordered by Respondent to increase his Vasotec[15] dose to 40 mg, Atenolol[16] to 50 mg three times a day, Norvasc[17] 20 mg daily, and Lasix[18] 80 mg twice a day. H.J. was also prescribed Neurontin 800 mg three times a day, Naprosyn 500 mg twice a day, Baclofen 20 mg three times a day, Norco 10/325 mg four times a day #120, Tramadol 100 mg three times a day #90, and Xanax 2 mg #60. In addition, an orthopedic referral was requested.

44. H.J. was next seen by Respondent on August 12, 2014, with complaints of neck ache, neuropathy, and anxiety. He was noted by Respondent to have had right knee surgery, but it is unclear when. His physical examination by Respondent was notable for 4+ lumbosacral tenderness and decreased range of motion down to 68 percent. He was referred by Respondent for an orthopedic evaluation for knee DJD. Respondent prescribed Norco 10/325 mg four times a day #120, Tramadol 100 mg three times a day #90, Xanax 2 mg #60, and Neurontin 600 mg three times a day #90.

45. H.J. was seen again by Respondent on August 18, 2014 after being discharged from the San Bernardino Medical Center. He was advised by Respondent to continue with Xarelto.[19] Respondent's notes indicate nothing further.

46. H.J. was seen again by Respondent on August 29, 2014, and again diagnosed with low back pain, knee DJD, neuropathy, neck ache, severe right knee DID, left leg DVT, cellulitis and neuropathy. Respondent prescribed Xanax 2 mg #60, Tramadol 100 mg #120, Norco 10/325 mg #120, Baclofen 20 mg #90, Naprosyn 500 mg #60, Neurontin 600 mg #90, and Xarelto 15 mg #30.

47. H.J. was seen again by Respondent on September 5, 2014, for medication refills according to the notes, but he was also diagnosed with diabetes mellitus, left calf

---

[15] Vasotec is an antihypertensive drug that blocks the formation of angiotensin II in the kidney, leading to relaxation of the arteries. It promotes the excretion of salt and water by inhibiting the activity of the angiotensin converting enzyme and is also used to treat congestive heart failure.

[16] Atenolol is a type of beta-blocker that is taken by mouth and is used to treat angina and high blood pressure.

[17] Norvasc is a vasodilator taken in tablet form and prescribed for hypertension and angina pectoris.

[18] Lasix is a trademark for the drug furosemide, which is used to increase the flow of urine.

[19] Xarelto is an anti-blood clotting medication.

DVT, hyperlipidemia,[20] hypertension, low back pain and neck ache at that visit. Respondent prescribed Naprosyn 500 mg twice a day, Baclofen 20 mg three times a day, Norco 10/325 mg #120, Tramadol 100 mg three times a day #90, and Xanax 2 mg #60.

48. H.J. was seen again by Respondent on October 3, 2014, complaining that he could not sleep due to low back pain, left leg phlebitis and anxiety. Respondent prescribed Norco 10/325 mg #120, Tramadol 100 mg three times a day #90, Xanax 2 mg #60, and Neurontin 600 mg three times a day.

49. H.J. was seen again by Respondent on November 4, 2014, complaining of low back pain, severe knee DJD, neck ache, anxiety. Respondent prescribed Norco 10/325 day #120, Klonopin 1 mg, #90, Naprosyn 500 mg #60, and Neurontin 600 mg #90.

50. H.J. was seen again by Respondent on December 2, 2014, with complaints of anxiety, left leg ache, neuropathy, and severe DJD. He was diagnosed by Respondent with obesity, hypertension, diabetes, left calf phlebitis, knee DJD, severe low back pain and anxiety. Respondent prescribed Norco 10/325 mg #120, Klonopin 2 mg #60, Baclofen 20 mg #90, Naprosyn 500 mg #60, and Neurontin 600 mg #90.

51. Dr. Yousefi opined that Respondent's documentation of subjective data was inadequate. There are no statements in Respondent's notes to indicate whether the patient was responding to treatment by Respondent. There was no objective testing to confirm the diagnosis of knee osteoarthritis or neuropathy. Respondent did not order X-rays or an MRI for further evaluation of neck and back pain. Respondent attempted to refer the patient to an orthopedist, but Respondent failed to document whether the patient ever saw the specialist.

52. The patient was primarily treated for his musculoskeletal complaints by Respondent with large amounts of short-acting opioids prior to a trial of physical therapy. Dr. Yousefi testified that it is unclear why H.J. was treated with both Norco 10/325 mg and Tramadol 100 mg concurrently. It is also unclear why Respondent did not start the patient on Norco 5/325 mg or Tramadol 50 mg first. For his anxiety disorder, Respondent prescribed a short-acting benzodiazepine. Respondent failed to document why an SSRI was not prescribed or if he ever attempted to refer the patient to a psychiatrist. Respondent's prescribing of Xanax in combination with Norco and Tramadol put the patient at risk for toxicity. Dr. Yousefi credibly opined that it appears from the records that Respondent had no concerns for controlled substance abuse and provided this patient with large quantities of Norco, Tramadol and Xanax without questioning him.

53. Respondent's treatment of H.J. constituted a simple departure from the standard of care in that he failed to document H.J.'s response to controlled medications. Respondent's treatment of R.L. constituted an extreme departure from the standard of care in that he prescribed two high strength opioids and a benzodiazepine drug simultaneously without appropriate medical justification.

---

[20] Hyperlipidemia is the presence of excess fats or lipids in the blood.

Patient J.K.

54. J.K. is a 64-year-old, obese male who presented to Respondent on January 27, 2012, with complaints of hypertension, low back pain, knee DJD, neck ache, COPD and anxiety. His physical examination by Respondent demonstrated tenderness in his shoulders with decreased range of motion and tenderness in both knees. J.K. was diagnosed by Respondent with hyperlipidemia, hypertension, low back pain, shoulder DJD, knee DJD, neck ache, anxiety, COPD and NASH,[21] and Respondent prescribed Norco 10/325 mg#180, Tramadol 50 mg #90, and Klonopin 2 mg #60.

55. J.K. was next seen by Respondent on February 29, 2012, with complaints of insomnia due to low back pain, knee DJD, and anxiety. He was diagnosed by Respondent with knee DJD, anxiety, neck pain, COPD and low back pain. Respondent prescribed Norco 10/325 mg #180, Naprosyn 500 mg #60, Klonopin 2 mg #60, Baclofen 20 mg #90 and Baclofen 500 mg #60.

56. J.K. was next seen by Respondent on March 29, 2012 and requested medication refills. Respondent's partially illegible notes indicate that J.K. was walking with low back pain. He was diagnosed by Respondent with shoulder DJD, low back pain, knee DJD, anxiety and hyperlipidemia. Respondent again prescribed Norco 10/325 mg #180, Tramadol 100 mg #90, Klonopin 2 mg #90 and Naprosyn 500 mg #60.

57. J.K. was next seen by Respondent on April 25, 2012 with complaints of anxiety. Respondent's notes again indicate that J.K. was walking with low back pain. Respondent prescribed Naprosyn 500 mg, Baclofen 20 mg, Norco 10/325 mg #180, Tramadol 100 mg #90, and Klonopin 2 mg #90.

58. J .K. was next seen by Respondent on May 23, 2012, and was diagnosed by Respondent with severe knee DJD, shoulder DJD, and anxiety. Respondent prescribed Norco 10/325 mg #180, Tramadol 100 mg #90, and Klonopin 2 mg #90. There is no indication as to why other medications were discontinued.

59. J.K. was seen by Respondent on June 26, 2012, after reporting that he had fainted as a result of severe low blood pressure, although the patient's actual blood pressure is not noted in the records. Respondent's notes do indicate that J.K. had not eaten breakfast. He was diagnosed by Respondent with shoulder DJD, neuropathy, neck ache and NASH. There are no notes indicating how Respondent arrived at the diagnosis of NASH on this visit or the January 27, 2012 visit. Respondent prescribed Norco 10/325 mg #180, Tramadol 100 mg #90 and Klonopin 2 mg #90.

///

///

[21] NASH is the acronym for nonalcoholic steatohepatitis, a fatty liver condition.

60. Respondent did not document in the progress notes whether the patient had a response to opioid medications or benzodiazepine. There was no imaging data to confirm the diagnosis of severe knee DJD or shoulder osteoarthritis. Respondent never referred the patient to an orthopedic surgeon or a pain management specialist.

61. The patient was treated for his musculoskeletal complaints by Respondent with Norco 10/325 mg six times a day and Tramadol 100 mg three times a day concurrently. It is unclear why Respondent did not first prescribe a lower dose of Norco and Tramadol or why Respondent did not prescribe a long-acting opioid. For his anxiety disorder, the patient was treated with Klonopin 6 mg per day. The Physician's Desk Reference recommends prescribers should not exceed 4 mg per day dosing when treating anxiety or pain disorder. Respondent did not prescribe an SSRI or refer J.K. to a psychiatrist for his anxiety disorder. Dr. Yousefi opined that concurrent use of large quantities of high- dose Norco, Tramadol and a long-acting benzodiazepine, such as Klonopin, is unsafe and risky.

62. Respondent's treatment of J.K. constituted a simple departure from the standard of care in that Respondent failed to document the patient's response to controlled medications. Respondent's treatment of J.K. constituted an extreme departure from the standard of care in that he excessively prescribing multiple opioid and benzodiazepine drugs for this patient.

Respondent's Evidence

63. Respondent immigrated to the United States from Vietnam in 1975. He completed a residency in New York and is Board-certified in internal medicine. No evidence was presented regarding prior discipline against his license, aside from issuance of the interim suspension order.

64. On September 12, 2016, Respondent underwent an eye examination with an optometrist and obtained a new prescription for corrective eyeglasses. Although Respondent suffers from right eye macular degeneration, Respondent believes his vision has been corrected with the new eyeglasses and maintains that the vision in his left eye "is very good." At the hearing, Respondent was able to read documents.

65. A year ago, Respondent underwent a hearing evaluation and obtained hearing aids. At the hearing, Respondent demonstrated hearing difficulties despite the use of hearing aids in both ears, as well as an assisted listening device. This further substantiates Dr. Briones-Coleman's finding that Respondent is suffering from profound hearing loss.

66. As for the allegations of dementia, Respondent pointed out that he had previously undergone a psychological evaluation with psychiatrist Stuart Shipko, M.D. Dr. Shipko did not diagnose Respondent with any psychological disorders. (Exhibit A.) However, Dr. Briones-Coleman agreed that Respondent did not have any psychological disorders causing his mental changes. Respondent did not provide any medical evaluation from Dr. Shipko contradicting Dr. Briones-Colman's opinion that Respondent was likely

suffering from mild to moderate dementia. Respondent underwent a psychological re-evaluation on September 28, 2016, which confirmed the initial diagnosis.

67. Respondent submitted progress notes from a neurological evaluation he underwent on October 7, 2016 with Nguyen N. Thong, M.D. Dr. Thong is a friend of Respondent's. They first met when both were living in Vietnam. In his written assessment, Dr. Thong concluded that, "I believe that [Respondent] has benign forgetfulness of old age." (Exhibit B, p. 3.)

68. At the hearing, Respondent repeatedly emphasized that he had prescribed Norco for his patients, which is a combination of acetaminophen and hydrocodone. He insisted that he had never prescribed hydrocodone alone. However, the Accusation did not allege that that Respondent had prescribed hydrocodone alone to any of the patients named in the Accusation.

69. Respondent did not offer any explanation for his prescribing practices, aside from stating that he had prescribed a high dose of Norco for one of his patients because the man was an "elephant." However, Dr. Yousefi credibly testified that a patient's obesity does not support a higher dosage of Norco. In fact, Dr. Yousefi credibly opined that an obese patient may present with sleep apnea, which can increase the risk of death from Norco and that, regardless of a patient's weight, a physician should start by prescribing a low dose and then titrate based upon the patient's response. Moreover, Respondent's explanation is belied by the fact that that he prescribed the same high dose of opioids for his non-obese patients.

70. Respondent asserted that the undercover agents "were lying" when they testified.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code (Code) sections 820 and 822, in that Respondent is currently unable to practice safely due to disabling conditions including profound hearing loss, visual impairment, and probable dementia, as set forth in Factual Findings 3 through 11 and 65 through 70.

2. Cause exists to discipline Respondent's certificate, pursuant to Code section 2234, subdivision (b), in that he engaged in unprofessional conduct constituting gross negligence, by prescribing multiple controlled substances without medical indication to C.P., T.T., R.L., H.J. and J.K., as set forth in Factual Findings 12-62.

3. Cause exists to discipline Respondent's certificate, pursuant to Code section 2234, subdivision (c), in that he engaged in unprofessional conduct constituting repeated negligent acts in that he prescribed multiple controlled substances without medical indication

to C.P., T.T., R.L., H.J. and J.K and repeatedly and continuously failed to assess the effects of the prescriptions given to those patients, as set forth in Factual Findings 12-62.

4. Cause exists to discipline Respondent's certificate, pursuant to Health and Safety Code section 11154, in that he prescribed controlled substances without medical indication to C.P., T.T., R. L., H.J. and J.K., as set forth in Factual Findings 12-62.

5. Cause exists to discipline Respondent's certificate, pursuant to Code section 2238, in that he violated Health and Safety Code section 11154 and engaged in unprofessional conduct by prescribing controlled substances without medical indication to C.P., T.T., R. L., H.J. and J.K., as set forth in Factual Findings 12 through 62.

6. Cause exists to discipline Respondent's certificate, pursuant to Code section 2242, subdivision (a), in that he prescribed dangerous drugs without an appropriate prior examination or medical indication to C.P., T.T., R.L., H.J. and J.K., as set forth in Factual Findings 12 through 62.

7. Cause exists to discipline Respondent's certificate, pursuant to Code section 2266, in that he failed to keep adequate records for C.P., T.T., R.L., H.J. and J.K., as set forth in Factual Findings 12 through 62.

8. Protection of the public is the highest priority for the Board's exercise of its disciplinary authority, pursuant to Code section 2001.1.

9. If the Board determines that a physician's ability to practice medicine safely is impaired due to mental or physical issues affecting competency, the licensing agency may revoke, suspend, or place the certificate on probation, or otherwise take such other action as the Board deems proper, pursuant to Code sections 820 and 822.

10. Code section 2227, subdivision (a), provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action as the Board deems proper.

11. Code section 2234 states that the Board shall take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct includes (b) gross negligence and (c) repeated negligent acts (two or more negligent acts).

12. Code section 2238 states that a violating a federal or state regulation or statute regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

13. Code section 2242 states that prescribing dangerous drugs without an appropriate prior examination and a medical indication constitutes unprofessional conduct. Pursuant to Code section 4022, drugs requiring a prescription are defined as dangerous drugs.

14. Code section 2266 states that a physician's failure to maintain adequate and accurate records relating to the provision of services to his patients constitutes unprofessional conduct.

15. Health and Safety Code section 11154 provides that no person shall knowingly prescribe a controlled substance to any person who is not being treated for a pathology or condition.

16. California Code of Regulations, title 16, section 1360, states that for the purposes of denial, suspension or revocation of a license, an act shall be considered to be substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such acts include violating any provision of the Medical Practice Act.[22]

17. The law is clear that the standard of proof to be used in this proceeding is "clear and convincing." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests on Complainant to establish the charging allegations by proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.) "Evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. (See, e.g., *In re Angelia P., supra*, 28 Cal.3d at p. 919; BAJI No. 2.62 (8th ed. 1994); 1 Witkin, Cal. Evidence (3d ed. 1986) Burden of Proof and Presumptions, § 160, p. 137.) The evidence need not establish the fact beyond a reasonable doubt." (*Broadman v. Comm'n on Judicial Performance* (1998) 18 Cal.4th 1079, 1090.) Complainant sustained her burden of proof with regard to the allegations in this matter.

18. The purpose of the Medical Practice Act is to assure the high quality of medical practice; in other words, to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) The purpose of physician discipline is to protect the life, health and welfare of the people at large and to set up a plan so that those who practice medicine will have the qualifications which will prevent as far as possible the evils which result from ignorance or incompetence or a lack of honesty and integrity. The imposition of license discipline does not depend on whether patients were injured by unprofessional medical practices. (See, *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d. 1471; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) " . . . Business and Professions Code section 2234 does not limit gross negligence or unprofessional conduct to the actual treatment of a patient—as opposed to administrative work—and does not require injury or harm to the patient before action may be taken against the physician or surgeon." (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1053.)

---

[22] Business and Professions Code sections 2000 through 2521.

> The law demands only that a physician or surgeon have the degree of learning and skill ordinarily possessed by practitioners of the medical profession in the same locality and that he exercise ordinary care in applying such learning and skill to the treatment of his patient. (Citations.) The same degree of responsibility is imposed in the making of a diagnosis as in the prescribing and administering of treatment. (Citations.) Ordinarily, a doctor's failure to possess or exercise the requisite learning or skill can be established only by the testimony of experts. (Citations.) Where, however, negligence on the part of a doctor is demonstrated by facts which can be evaluated by resort to common knowledge, expert testimony is not required since scientific enlightenment is not essential for the determination of an obvious fact. (Citations.)

(*Lawless v. Calaway* (1944) 24 Cal.2d 81, 86.)

19. A "negligent act" as used in [Business and Professions Code section 2234] is synonymous with the phrase, "simple departure from the standard of care." (*Zabetian v. Medical Board of California* (2000) 80 Cal.App.4th 462.)

20. Gross negligence has been defined as an extreme departure from the ordinary standard of care or the "want of even scant care." (*Gore v. Board of Medical Quality Assurance* (1970) 110 Cal.App.3d 184, 195-198.)

21. In his testimony, Respondent took no responsibility for his actions or inactions in connection with the care of his patients, and sought to justify and minimize his conduct. It is well-established that a respondent convinced of his innocence is not required to demonstrate artificial acts of contrition. (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 747-748; *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 744-745.) However, it is also well-established that remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Finally, the evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

22. Respondent has had a long career as a physician. No evidence was presented as to a prior history of discipline. At the hearing, Respondent continued to exhibit a diminished capacity to practice safely due to hearing and cognitive impairments, and a serious lack of knowledge as to several matters, including medical record keeping, the inappropriateness of prescribing multiple controlled substances concurrently and in high

dosages without an appropriate prior examination or medical indication, and the need to assess the effects of prescriptions. The allegations in the Accusation pertain to patient care and treatment provided fairly recently, in 2012 and 2014. Respondent provided insufficient assurance that, if probation were ordered, he would comply with probationary requirements and refrain from further violations.

23. Respondent's actions and his disabling conditions, including profound hearing loss, visual impairment, and probable dementia, pose great risk to his patients, and he has offered scant evidence of rehabilitation or mitigation. Accordingly, the public health, safety and welfare cannot be adequately protected by any discipline short of revocation.

ORDER

Physicians and Surgeon's Certificate Number A36092, issued to Respondent Edward Bui Hai, M.D., is revoked.

DATED: July 13, 2017

DocuSigned by:
Laurie Pearlman
3695B779ECE34B2...

LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
RANDALL R. MURPHY
Deputy Attorney General
State Bar No. 165851
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-2493
Facsimile: (213) 897-9395
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Edward Bui Hai, M.D. 2265 Denair Ave., Apt. 314 Highland, California 92346-4708 Physician's and Surgeon's Certificate No. A36092, Respondent.	Case No. 800-2013-001552 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about December 8, 1980, the Medical Board issued Physician's and Surgeon's Certificate Number A36092 to Edward Bui Hai, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2018, unless renewed.

3. In a disciplinary action entitled *Ex Parte Petition for Interim Suspension Order Against Edward Bui Hai, M.D.*, the Board issued an order, effective September 2, 2016, in which Respondent's Physician's and Surgeon's Certificate was suspended. The noticed hearing on the Petition for an Interim Suspension Order was held on September 19, 2016. The suspension was reaffirmed following the noticed hearing. A copy of that order is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. The Medical Practice Act ("Act") is codified at sections 2000-2521 of the Business and Professions Code.

6. Pursuant to Code section 2001.1, the Board's highest priority is public protection.

7. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

". . ."

8. Code section 2227, subdivision (a), provides as follows:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary

action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

9. Section 820 of the Code provides, in relevant part:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

10. Section 822 of the Code provides, in relevant part:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

11. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially

related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

12. Section 2238 of the Code states: "A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

13. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the

patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

14. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

15. Health and Safety Code section 11154 states in relevant part:

"(a) Except in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance, except as provided in this division."

FACTS REGARDING PHYSICAL AND MENTAL COMPETENCY

16. On or about October 15, 2015, Respondent underwent an internal medicine evaluation by Felicia Briones-Colman, M.D.

17. Respondent is a 75-year-old male with multiple medical problems. He specializes in internal medicine. Respondent's relevant medical issues include macular degeneration, hearing loss and mental deficiencies. Respondent was diagnosed with macular degeneration in his right eye in 2011 at Kaiser Permanente.

18. Dr. Briones-Colman concluded that Respondent suffered from severe hearing loss, visual impairment and mental status deficits. These medical conditions make it difficult for him to practice medicine effectively. Specifically, her report found that:

A. Respondent is legally blind in his right eye. He clinically shows signs of macular degeneration in that eye. Her report also indicates that Respondent has some loss of his central vision on the right side, but he has additional visual impairment that may stem from other

causes, as well. Even with correction, Respondent also has mild vision loss in his left eye.

B. Respondent is profoundly hard of hearing. He is unable to have a normal conversation and it is doubtful he is able to accurately hear conversations over a telephone. Even when Dr. Briones-Coleman was screaming at him he did not hear all of her questions correctly. At one point he was cupping both of his ears with his hands and was still having difficulty understanding what was being said. Respondent's hearing loss makes interacting with staff, pharmacists, other doctors and patients, almost impossible.

C. Respondent probably has mild to moderate dementia. He was able to do some portions of his SLUMS[1] examination, such as calculations and short-term recall after hearing a short story. However, on longer recall, being asked to remember 5 items, he insisted he had not been told any such items. He did name "pen", but he seemed to be naming things on his person: pen, wallet, etc. Of more concern was his inability to name more than 9 animals in a minute, even with coaching to keep going. He repeated several of the same animals. He also could not accurately draw the face of a clock. He almost got the hands correct but they are both the same size, lacking differentiation between the minute and hour hand. The demarcation of the hour markers are also incorrect. These examples show a change in his mental status that goes beyond his inability to hear and likely is not secondary to his vision.

D. Respondent is aware of his macular degeneration, hearing loss, and other physical issues, but has not been evaluated for these issues in at least two years. He has not had any lab work to monitor his known issues related to blood work. He has not seen his ophthalmologist to monitor or treat his macular degeneration. It does not appear he has even updated his corrective lenses to improve his vision. He has not been to the dentist in (3) three years, despite loss of numerous teeth, which impacts his ability to eat. Although it is not uncommon for doctors to avoid regular doctor visits and to write their own prescriptions, his lapse in regular medical care despite serious physical changes shows poor judgment, which is consistent with dementia.

[1] SLUMS is the St. Louis University Mental Status examination. It is a test given to individuals suspected to have dementia.

19. Dr. Briones-Colman's evaluation concluded that, because Respondent is impaired, it is not safe for him to practice medicine. Respondent has an inability to appropriately obtain auditory and visual input from his patients, co-workers or colleagues. His hearing loss alone puts patients at risk for receiving the wrong medication. His use of a stethoscope is likely impaired. His lack of vision could prevent him from performing a proper physical exam. His judgment, memory and mental status deficits make it difficult for him to process a large amount of complex information in a manner that is necessary to practice medicine.

20. Dr. Briones-Colman's recommendations included Respondent being evaluated for the medical issues referenced above, his hearing, vision and other medical issues being optimally treated, after which he should have another mental status and physical exam to determine if some of his deficits have resolved.

FACTS REGARDING PATIENT CARE

PATIENT C.P.[2]

21. C.P. is a female undercover officer who was initially evaluated by Respondent on September 30, 2014. Her medications were listed as Vicodin[3] and Aspirin. She presented with a claimed history of low back pain and requested a prescription for Oxycontin.[4]

22. In response to Respondent's questions about her symptoms she denied experiencing back pain, neck pain, knee pain or a history of smoking. Respondent's examination revealed no tenderness in her neck, back or her knees. Her lung exam and neurologic exam were marked normal. However, despite the foregoing she was diagnosed with neck ache, low back pain, chronic obstructive pulmonary disease (COPD), knee degenerative joint disease (DJD) and advised to stop smoking. She received prescriptions for Norco[5] 10/325 mg #90, Tramadol[6] 50 mg

---

[2] Patients are identified in this Accusation by initials to protect privacy.

[3] Vicodin is an opioid pain management drug that is a brand name for hydrocodone, a ketone derivative of codeine that is about six times more potent than codeine.

[4] Oxycontin is a narcotic opioid agonist and Schedule II controlled substance, with abuse potential similar to morphine.

[5] Norco is an opioid pain medication formula consisting of acetaminophen and hydrocodone.

[6] Tramadol is an opioid, non-steroidal, anti-inflammatory drug.

#90, Xanax[7] 1 mg #60, Naprosyn[8] 500 mg #60, Neurontin[9] 600 mg #90 and Baclofen[10] 20 mg #90. Respondent also ordered laboratory blood testing.

23. C.P. was seen for follow-up on October 28, 2014, and again requested a prescription for OxyContin. Respondent did not question her about her neck, back or knee pain, but noted that she had no tenderness in her neck, back or knees. However, she was again diagnosed with COPD, knee DJD, and neck ache. Respondent recommended that she "eat good food" and prescribed Norco 10/325 mg #90, Klonopin[11] 1 mg #60, Baclofen, Neurontin and Naprosyn in the amounts previously prescribed.

PATIENT T.T.

24. T.T. is a female undercover officer who was initially evaluated by Respondent on October 28, 2014. She requested a prescription for OxyContin and indicated that she had used Norco borrowed from her friend. T.T. told Respondent that she had no pain on the day of the examination. She was examined by Respondent and reported that she had no tenderness in her back or her knees. However, she was diagnosed with neck ache, low back pain, and knee DJD. She was provided prescriptions for Norco 5/325 mg #90, Klonopin 1 mg #60, Naprosyn 500 mg, Baclofen 20 mg, and Neurontin 600 mg.

25. T.T. was seen for a second visit on December 4, 2014. She requested refills for her medications. Although Respondent did not ask any questions regarding back or knee pain, she told him that she had no tenderness. However, she was diagnosed again with neck ache, low back pain, and knee DJD. She was told to "eat good food." Refills for Norco 10/325 mg #90, Klonopin 1 mg #60, Naprosyn and Neurontin were prescribed.

///

---

[7] Xanax is a non-opioid, anti-anxiety medication of the benzodiazepine class.

[8] Naprosyn is brand name for Naproxen-a non-opioid, non-steroidal, anti-inflammatory drug used in the treatment of pain and inflammation.

[9] Neurontin is a non-opioid, anti-seizure medication with strong warnings regarding use as it often produces a risk of suicidal thoughts and behaviors. Warnings also include its interaction with opioid medications.

[10] Baclofen is a muscle relaxant used to treat spasticity of spinal origin, such as multiple sclerosis or spinal cord injuries.

[11] Klonopin is an anti-convulsant and anti-panic agent.

PATIENT R.L.

26. R.L. is a 44-year-old male who first presented to Respondent on January 10, 2014. Unfortunately, Respondent's notes are illegible for that visit. However, R.L. was diagnosed with COPD, a right kidney stone, HTN and knee DJD. R.L. was prescribed Norco 10/325 mg #120, Tramadol 100 mg, and Xanax 1 mg #90.

27. R.L. was next seen by Respondent on February 12, 2014, with complaints of low back pain. He was diagnosed with a right kidney stone and hypertension. He was prescribed Naprosyn 500 mg, Xanax 1 mg, Tramadol 100 mg, and Norco 10/325 mg.

28. R.L. was seen again on March 12, 2014, and was diagnosed with knee DJD and a right kidney stone. He was prescribed Naprosyn 500 mg, Xanax 1 mg, Tramadol 100 mg, and Norco 10/325 mg.

29. R. L. was seen on April 14, 2014 and again diagnosed with knee DJD and a right kidney stone. He was prescribed Xanax 1 mg, Tramadol 100 mg, and Norco 10/325.[12]

30. R. L.'s next follow up was on May, 13, 2014. He was again diagnosed with knee DJD and a right kidney stone. He was prescribed Xanax 1 mg #90, Tramadol 100 mg #90, and Norco 10/325 mg #150.

31. R. L. was seen again on June 17, 2014, and diagnosed with severe low back pain, hyperlipidemia, severe knee DJD, neck ache, neuropathy, and anxiety. This appears to be the first mention of anxiety, although R.L. was prescribed Xanax for several months prior. The progress notes for this visit note that R.L. could not sleep at night due to severe low back pain; his range of neck motion was decreased to 70%; he was noted to have 5+ spine tenderness, and; 5+ tenderness in his knees with a range of motion decreased to 70%. He was diagnosed with severe low back pain, severe knee DJD, neck ache, neuropathy, anxiety, and GERD.[13] He was prescribed Naprosyn 500 mg twice a day, Baclofen 20 mg three times a day, Neurontin 800 mg three times a day, Norco 10/325 mg #150, Tramadol 100 mg three times a day #90, and Xanax 1 mg twice a day #60. These prescription entries are also the most complete to date.

[12] No quantity is noted on those prescriptions lacking the quantity (#) symbol.
[13] Gastroesophageal reflux disease.

32. R. L. was seen again on July 17, 2014, with complaints of right-sided kidney stone pain, severe knee DJD, severe low back pain, neuropathy, and anxiety. He indicated that he could not sleep due to severe low back pain and knee DJD. His physical examination revealed 5+ lumbosacral tenderness and a knee exam revealed a range of motion to 70%. He was diagnosed with hypertension, hyperlipidemia, severe knee DJD, neuropathy, anxiety, and GERD. He was prescribed Tramadol 100 mg. #90, Xanax 1 mg. #90, Norco 10/325 mg #150, Baclofen 20 mg three times a day #90, Naprosyn 500 mg twice a day #60, Neurontin 600 mg three times a day #90.

33. R. L. was seen on August 15, 2014, with complaints of right kidney stone pain and anxiety. However, his physical examination was unchanged. He was prescribed Norco 10/325 mg #150, Tramadol 100 mg #90, Xanax 1 mg #90, ProAir[14] MDI (Metered Dose Inhaler), and Neurontin 600 mg three times a day.

34. R. L. was seen on September 15, 2014 with complaints of severe low back pain, knee DJD, and a right kidney stone. His physical examination was essentially unchanged compared to the previous visit. He was diagnosed with right kidney stone pain, severe low back pain, severe knee pain and DJD, neck ache, anxiety and neuropathy. He was prescribed Norco 10/325 mg #150, Tramadol 100 mg three times a day #90, Xanax 1 mg #60, and Naprosyn 500 mg twice a day.

35. R. L. was next seen on October 15, 2014, with complaints of chronic severe low back pain, neuropathy, neck ache, knee DJD, and a right kidney stone. He was prescribed Norco 10/325 mg #150, Tramadol 100 mg #90, and Xanax 1 mg #60.

36. A renal ultrasound was completed on November 12, 2014, revealing renal calculus and two tiny left renal calculi, one tiny right calculi and with no hydronephrosis.[15]

37. R.L. was next seen on November 14, 2014, with complaints of right kidney stone pain, left knee DJD, severe low back pain, neuropathy and anxiety. His neck showed decreased range of motion to 66% and he was diagnosed with left knee DJD, neuropathy, and anxiety. He

[14] ProAir is an allergy inhaler treatment.
[15] This is an obstructive kidney disease that causes painful swelling of the kidney.

was prescribed Norco 10/325 mg #150, Klonopin 2 mg #60, and Naprosyn 500 mg twice a day #60.

38. R.L. was next seen on December 15, 2014, with complaints of neck ache, knee pain, low back pain, and a right kidney stone. He also complained of neuropathy and anxiety. Although his physical exam was essentially unchanged (indicating the information was simply copied from one note to the next) he was diagnosed with obstructive sleep apnea, neuropathy, bladder pain, anxiety, knee DJD, kidney stone, severe low back pain and neck ache. He was prescribed Robitussin AC, Norco 10/325 mg #150, and Klonopin 2 mg #60.

PATIENT H.J.

39. H.J. is a 58-year-old male who Respondent first saw on February 12, 2014. Respondent also saw H.J. on March 14, 2014, April 10, 2014, May 12, 2014, and June 11, 2014, however, the progress notes for those encounters are illegible.

40. H.J. was seen on July 11, 2014 and for the first time it is noted that his vital signs were taken. It is noteworthy that his blood pressure was recorded as 192/100. He complained of low back pain, severe right knee DJD, neuropathy, and anxiety. He indicated that he was unable to walk well due to severe knee pain. His neck range of motion was indicated as "decreased" to 64%. H.J. was noted to have 5+ lumbar spine tenderness and his deep tendon reflexes were 2+. On this visit he was ordered to increase his Vasotec[16] dose to 40 mg, Atenolol[17] to 50 mg three times a day, Norvasc[18] 20 mg daily, and Lasix[19] 80 mg twice a day. H.J. was also prescribed Neurontin 800 mg three times a day, Naprosyn 500 mg twice a day, Baclofen 20 mg three times a day, Norco 10/325 mg four times a day #120, Tramadol 100 mg three times a day #90, and Xanax 2 mg #60. In addition, an Orthopedic referral was requested.

---

[16] Vasotec is a an antihypertensive drug that blocks the formation of angiotensin II in the kidney, leading to relaxation of the arteries. It promotes the excretion of salt and water by inhibiting the activity of the angiotensin converting enzyme and is also used to treat congestive heart failure.

[17] Atenolol is a type of beta-blocker that is taken by mouth and is used to treat angina and high blood pressure.

[18] Norvasc is a vasodilator taken in tablet form and prescribed for hypertension and angina pectoris.

[19] Lasix is a trademark for the drug furosemide, which is used to increase the flow of urine.

41. H.J. was next seen on August 12, 2014, with complaints of neck ache, neuropathy, and anxiety. He was noted to have had right knee surgery, but it is unclear when. His physical examination was notable for 4+ lumbosacral tenderness and decreased range of motion down to 68%. He was referred to orthopedics for further evaluation of knee DJD. He was prescribed Norco 10/325 mg four times a day #120, Tramadol 100 mg three times a day #90, Xanax 2 mg #60, and Neurontin 600 mg three times a day #90.

42. H.J. was seen again on August 18, 2014 after being discharged from the San Bernardino Medical Center. He was advised by Respondent to continue with Xarelto.[20] The notes indicate nothing further.

43. H.J. was seen again on August 29, 2014, and again diagnosed with low back pain, knee DJD, neuropathy, neck ache, severe right knee DJD, left leg DVT, cellulitis and neuropathy. He was prescribed Xanax 2 mg #60, Tramadol 100 mg #120, Norco 10/325 mg #120, Baclofen 20 mg #90, Naprosyn 500 mg #60, Neurontin 600 mg #90, and Xarelto 15 mg #30.

44. H.J. was seen again on September 5, 2014, for medication refills according to the notes, but he was also diagnosed with diabetes mellitus, left calf DVT, hyperlipidemia,[21] hypertension, low back pain and neck ache at that visit. He was prescribed Naprosyn 500 mg twice a day, Baclofen 20 mg three times a day, Norco 10/325 mg #120, Tramadol 100 mg three times a day #90, and Xanax 2 mg #60.

45. H.J. was seen again on October 3, 2014, complaining that he could not sleep due to low back pain, left leg phlebitis and anxiety. He was prescribed Norco 10/325 mg #120, Tramadol 100 mg three times a day #90, Xanax 2 mg #60, and Neurontin 600 mg three times a day.

46. H.J. was seen again on November 4, 2014, complaining of low back pain, severe knee DJD, neck ache, anxiety. He was again prescribed Norco 10/325 day #120, Klonopin 1 mg, #90, Naprosyn 500 mg #60, and Neurontin 600 mg #90.

47. H.J. was seen again on December 2, 2014, with complaints of anxiety, left leg ache,

[20] Xarelto is an anti-blood clotting medication.
[21] Hyperlipidemia is the presence of excess fats or lipids in the blood.

neuropathy, and severe DJD. He was diagnosed with obesity, hypertension, diabetes, left calf phlebitis, knee DJD, severe low back pain and anxiety. He was prescribed Norco 10/325 mg #120, Klonopin 2 mg #60, Baclofen 20 mg #90, Naprosyn 500 mg #60, and Neurontin 600 mg #90.

PATIENT J.K.

48. J.K. is a 64-year-old, obese male who presented to Respondent on January 27, 2012, with complaints of hypertension, low back pain, knee DJD, neck ache, COPD and anxiety. His physical examination demonstrated tenderness in shoulders with decreased range of motion and tenderness in both knees. J.K. was diagnosed with hyperlipidemia, hypertension, low back pain, shoulder DJD, knee DJD, neck ache, anxiety, COPD and NASH[22] and prescribed Norco 10/325 mg #180, Tramadol 50 mg #90, and Klonopin 2 mg #60.

49. J.K. was next seen on February 29, 2012, with complaints of insomnia due to low back pain, knee DJD, and anxiety. He was diagnosed with knee DJD, anxiety, neck pain, COPD and low back pain. He was prescribed Norco 10/325 mg #180, Naprosyn 500 mg #60, Klonopin 2 mg #60, Baclofen 20 mg #90, 500 mg #60.

50. J.K. was next seen on March 29, 2012 and requested medication refills. Respondent's partially illegible notes indicate that J.K. was walking with low back pain. He was diagnosed with shoulder DJD, low back pain, knee DJD, anxiety and hyperlipidemia. He was again prescribed Norco 10/325 mg #180, Tramadol 100 mg #90, Klonopin 2 mg #90 and Naprosyn 500 mg #60.

51. J.K. was next seen on April 25, 2012 with complaints of anxiety. Respondent's notes again indicate that he was walking with low back pain. He was prescribed Naprosyn 500 mg, Baclofen 20 mg, Norco 10/325 mg #180, Tramadol 100 mg #90, and Klonopin 2 mg #90.

[22] NASH is the acronym for Nonalcoholic steatohepatitis. A fatty liver (steatosis) of any degree, with portal (and lobular) inflammation, ballooning degeneration and spotty necrosis—usually lytic in areas of fatty hepatocytes (acidophil bodies are rare). It is associated with mononuclear and polymorphonuclear infiltrate; periportal fibrosis is common, as are megamitochondria (a nonspecific indicator of mitochondrial dysfunction).

52. J.K. was next seen on May 23, 2012, and was diagnosed with severe knee DJD, shoulder DJD, and anxiety. He was prescribed Norco 10/325 mg #180, Tramadol 100 mg #90, and Klonopin 2 mg #90. There is no indication as to why other medications were discontinued.

53. J.K. was seen on June 26, 2012, after having fainted as a result of severe low blood pressure, although the actual blood pressure is not found in the records. Respondent's notes do indicate that J.K. had not eaten breakfast. He was diagnosed with shoulder DJD, neuropathy, neck ache and NASH. There are no notes indicating how the diagnosis of NASH was arrived at. He was prescribed with Norco 10/325 mg #180, Tramadol 100 mg #90 and Klonopin 2 mg #90.

FIRST CAUSE FOR DISCIPLINE
(Physical inability to practice safely)

54. Respondent's physician's and surgeon's certificate is subject to disciplinary action under sections 820 and 822 of the Code, in that Respondent is currently unable to practice safely due to his deteriorated physical condition.

55. Paragraphs 3 and 16 through 54 are incorporated herein by reference as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional conduct -gross negligence)

56. By reason of the matters set forth above in paragraphs 21 through 55, incorporated herein by this reference, Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he engaged in unprofessional conduct constituting gross negligence. The circumstances are as follows:

57. Respondent's prescribing of multiple controlled substances without medical indication to C.P., T.T., R.L., H.J. and J.K. constitutes gross negligence.

58. Respondent prescribed numerous medications to C.P., T.T., R.L., H.J. and J.K. despite those patients having no symptoms of back pain or knee pain at any time. C.P. and T.T., did not complain of anxiety. Respondent proceeded to diagnose these patients with neck pain, low back pain, knee DJD and COPD and prescribe them medications not medically indicated.

59. Respondent's diagnosis of R.L. and J.K. include neuropathy on several encounters, however, there are no symptoms, abnormal neurologic exam or nerve conduction study to suggest

neuropathy. Respondent also failed to order imaging data to confirm the diagnosis of severe knee osteoarthritis in R.L. and J.K.

60. Respondent's prescribing of two high strength opioids and a benzodiazepine drug concurrently without appropriate medical justification for patients C.P., T.T., R.L., H.J. and J.K. put those patients at risk of toxicity and constitutes gross negligence.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional conduct –repeated negligent acts)

61. By reason of the matters set forth above in paragraphs 21 through 60, incorporated herein by this reference, Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he engaged in unprofessional conduct constituting repeated negligent acts. The circumstances are as follows:

62. In addition to the foregoing, Respondent's repeated and continuous failure to assess the effects of the prescriptions given to C.P., T.T., R.L., H.J. and J.K. constitutes repeated negligent acts.

FOURTH CAUSE FOR DISCIPLINE

(Prescribing Controlled Substances without Medical Indication)

63. By reason of the matters set forth above in paragraphs 3 through 62, incorporated herein by this reference, Respondent violated Health and Safety Code, section 11154, in that he prescribed controlled substances without medical indication for C.P., T.T., R.L., H.J. and J.K.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violating Statute Regulating Controlled Substances)

64. By reason of the matters set forth above in paragraphs 21 through 63, incorporated herein by this reference, Respondent is subject to disciplinary action under section 2238 of the Code, in that he violated Health and Safety Code section 11154. The circumstances are as follows:

65. Respondent prescribed controlled substances without medical indication to C.P., T.T., R.L., H.J. and J.K., which constitutes a violation of Health and Safety Code section 11154 and, thus, section 2238 of the Code, and constitutes unprofessional conduct.

SIXTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct - Prescribing Dangerous Drugs without Prior Examination or Medical Indication)

66. By reason of the matters set forth above in paragraphs 21 through 65 incorporated herein by this reference, Respondent is subject to disciplinary action under section 2242, subdivision (a) of the Code, in that he prescribed dangerous drugs without an appropriate prior examination and a medical indication to C.P., T.T., R.L., H.J. and J.K. The circumstances are as follows:

67. Respondent prescribed dangerous drugs without performing an appropriate prior examination to C.P., T.T., R.L., H.J. and J.K. Respondent's failure to properly examine any of the foregoing patients while prescribing dangerous drugs to those patients constitutes a violation of section 2242, subdivision (a).

SEVENTH CAUSE FOR DISCIPLINE
(Medical Record Keeping)

68. By reason of the matters set forth above in paragraphs 21 through 67, incorporated herein by this reference, Respondent violated Code section 2266, in that he failed to keep adequate records for C.P., T.T., R.L., H.J. and J.K. The circumstances are as follows:

69. Respondent's notes for C.P., T.T., R.L., H.J. and J.K., are incomplete, illegible and wholly lacking in required information concerning the respective patients.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A36092, issued to Edward Bui Hai, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Edward Bui Hai, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

///

4. Taking such other and further action as deemed necessary and proper.

DATED: October 14, 2016

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

LA2016502583
62147471.doc

EXHIBIT A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Interim Suspension Order Against:	Case No. 800-2013-001552
EDWARD BUI HAI, M.D.,	OAH No. 2016080947
Physician's and Surgeon's Certificate No. A36092,	
Respondent.	

ORDER GRANTING INTERIM SUSPENSION ON NOTICED PETITION

On August 26, 2016, at Los Angeles, California, the petition of Kimberly Kirchmeyer (Petitioner), Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, for issuance, on an ex parte basis, of an Interim Order of Suspension pursuant to Government Code section 11529, was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Randall R. Murphy, Deputy Attorney General (DAG), represented Petitioner. Although he received proper notice of the August 26, 2016 hearing, there was no appearance by or on behalf of Edward Bui Hai, M.D. (Respondent).

At the August 26, 2016 hearing, the Declaration of Randall R. Murphy was amended by interlineation as follows: at page 1, line 22, and at page 2, line 1, "May" was changed to "August." Also during the August 26, 2016 hearing, the ALJ was provided with Exhibit A, which was attached to the Memorandum of Points and Authorities in Support of Ex Parte Petition for Interim Suspension Order, as well as the Declaration of Felicia Briones-Colman, M.D., with attached exhibits. Petitioner's counsel requested that Petitioner's Exhibit A and the Declaration of Dr. Briones-Colman with attached exhibits be placed under seal since those exhibits contain confidential medical information which is protected from disclosure to the public. Redaction of the documents to obscure this information was not practicable and would not have provided adequate privacy protection. In order to protect the patient's privacy and prevent the disclosure of confidential information, the ALJ issued a Protective Order, dated September 2, 2016, placing Petitioner's Exhibit A and the

Declaration of Dr. Briones-Colman with attached exhibits under seal after their use in preparation of the Order following the ex parte hearing. That September 2, 2016 Protective Order remains in effect, and those exhibits shall remain under seal and shall not be opened, except by order of the Board, by OAH, or by a reviewing court.

The ALJ read and considered the ex parte petition and supporting documents, and the ALJ heard and considered Petitioner's oral argument at the hearing. The matter was submitted on August 26, 2016. The ALJ issued an interim order suspending Respondent's physicians and surgeon's certificate and setting the matter for a noticed hearing on September 19, 2016, pursuant to the requirements of Government Code section 11529.

The matter was again before the ALJ on September 19, 2016, for a noticed hearing pursuant to Business and Professions Code section 11529, subdivision (c). DAG Randall R. Murphy represented Petitioner. Respondent was present and represented himself.

During the September 19, 2016 hearing, the ALJ was provided with Respondent's Exhibits A and B containing confidential medical information protected from disclosure to the public. Redaction of the documents to obscure this information is not practicable and would not provide adequate privacy protection. In order to protect the patient's privacy and prevent the disclosure of confidential information, the ALJ ordered that Respondent's Exhibits A and B be placed under seal after their use in preparation of the Order following the noticed hearing. Those exhibits shall remain under seal and shall not be opened, except by order of the Board, by OAH, or by a reviewing court.

The ALJ read and considered all filed papers supporting and opposing the Petition, and the ALJ heard and considered the testimony of Respondent and argument made by the parties at the hearing. The matter was submitted on September 19, 2016.

FACTUAL FINDINGS

1. Petitioner filed the Petition for Interim Order of Suspension (Petition) while acting in her official capacity as the Executive Director of the Board.

2. On December 8, 1980, the Board issued Physician's and Surgeon's Certificate Number A36092 to Respondent. Respondent's certificate is scheduled to expire on January 31, 2018.

3(a). On October 15, 2015, pursuant to Respondent's written agreements to submit to voluntary mental and physical examinations, Felicia Briones-Colman, M.D., conducted an evaluation of Respondent, who was 75 years old at that time.

The evaluation included a review of a portion of Respondent's medical records and a patient history and physical examination.

3(b). Dr. Briones-Colman found that Respondent had a number of disabling conditions including profound hearing loss, visual impairment, and probable dementia. She also opined that these conditions and deficits "make it difficult for him to practice medicine effectively." (Dec. of Dr. Briones-Colman, p. 2, para. 9.)

3(c). Regarding Respondent's hearing deficit, Dr. Briones-Colman stated that Respondent is profoundly hard of hearing, is "unable to have a normal conversation," and that even when she used hand gestures and raised her voice so that she "was screaming at him, . . . he did not hear all of my questions correctly. At one point he was cupping both of his ears with his hands and was still having difficulty understanding what I was saying. His hearing loss makes interacting with staff, pharmacists, other doctors and patients almost impossible." (Dec. of Dr. Briones-Colman, p. 2, para. 9.) Her evaluation also "revealed that [Respondent] is legally blind in his right eye . . .[and] clinically shows signs of macular degeneration in that eye." (*Id.* at para. 10.)

3(d). Dr. Briones-Colman's evaluation also "revealed that [Respondent] likely has mild to moderate dementia. The testing showed a change in his mental status that goes beyond his inability to hear and likely is not secondary to his vision loss." (Dec. of Dr. Briones-Colman, at para. 11.) This included an inability to name more than nine animals in a minute, even with coaching, and an inability to accurately draw the face of a clock. Dr. Briones did note that "[o]ther causes of mental status changes can be depression, anxiety, psychosis, or other mental disorders. [However, she] did not feel [Respondent] has any psychological disorders that explain his mental changes. A second possibility is a vitamin B12 deficiency. . . . In the elderly, it is not uncommon for individuals to have some loss of mental function at this level. His hepatitis C infection can also affect mental function. If his creatinine and kidney function has worsened since his last exam in 2013, which is not unreasonable given his uncontrolled hypertension, this could cause reversible mental status deficits." (Dec. of Dr. Briones-Colman, attached Ex. B, p. 9.)

4. Dr. Briones-Colman concluded: "It is not safe for [Respondent] to practice medicine at this time. Practicing medicine safely and effectively requires many skills: hearing the patient's history, visually and auditorily examining patients and being able to weigh the risk and benefits of recommending or withholding treatments. [Respondent] has an inability to appropriately obtain auditory and visual input from his patients, co-workers or colleagues. His hearing loss alone puts patients at risk for receiving the wrong medication. His use of a stethoscope is likely impaired. His lack of vision could prevent him from performing a proper physical exam. His judgment, memory and mental status deficits make it difficult for him to process a large amount of complex information in a manner that is necessary to

practice medicine. . . . "In my opinion, [Respondent] is impaired and it is not safe for him to practice medicine." (Dec. of Dr. Briones-Colman, at paras. 12 and 13.)

5. Dr. Briones-Colman recommended that Respondent undergo "a full diagnostic evaluation to see if his visual impairment, hearing loss and mental status changes can be treated and reversed. [¶] He should see an ophthalmologist/optometrist for a thorough eye exam and obtain a new prescription of corrective lenses and other treatments as appropriate. [¶] [Respondent] should also see an otolaryngologist and/or an audiologist to determine any reversible etiologies for his hearing loss and have hearing aids fitted to improve hearing as much as possible. [¶] [Respondent] should have a full dementia work up including but not limited to laboratory exams to check his kidney, liver, thyroid function, vitamin B12 and folate levels and blood counts. He should also have a scan of his head to rule out reversible causes for his mental status changes. [¶] Once [Respondent] has had appropriate evaluations as outlined above and his hearing, vision and other medical issues have been optimally treated, he should have another mental status exam and physical exam to determine if some of his deficits have resolved." (Dec. of Dr. Briones-Colman, attached Ex. B, p. 10.)

6. At the September 19, 2016 hearing, Respondent testified and submitted documents which revealed the following:

(a). On September 12, 2016, Respondent underwent an eye examination with an optometrist and obtained a new prescription for corrective eyeglasses. The optometrist noted that Respondent had a history of macular degeneration and recommended that he follow up with an ophthalmologist. Respondent has an appointment with an ophthalmologist in December 2016. Although Respondent suffers from right eye macular degeneration, Respondent believes his vision has been corrected with the new eyeglasses and maintains that his visual acuity is now 35/40 for both eyes. At the September 19, 2016 hearing, Respondent was able to read documents using his new eyeglasses and holding the documents close to his face.

(b). On September 16, 2016, Les Lee Liu, M.D., provided treatment for Respondent to treat a right ear infection. In 2015, Respondent had undergone a hearing assessment for right ear otosclerosis hearing impairment[1] and obtained a hearing aid for his right ear. At the September 19, 2016 hearing, Respondent demonstrated great difficulty hearing the ALJ and Petitioner's counsel. Respondent had to move his chair so that his face was just two feet away from the ALJ, and he cupped his hand to his left ear while the ALJ raised her voice, almost shouting, in order for Respondent to hear what was being said. Several times during the hearing, Respondent's cellular phone rang, but he did not hear it and had to be informed of it

[1] Otosclerosis is an abnormal growth of bone near the middle ear which can result in hearing loss.

(loudly) by the ALJ. Respondent's extreme hearing difficulty on September 19, 2016 further substantiates Dr. Briones-Coleman's finding that Respondent is suffering from profound hearing loss. (See Factual Finding 3(c).)

(d). When asked by the ALJ to address the allegations of his likely dementia, Respondent pointed out that he had previously undergone a psychological evaluation with Dr. Stuart Shipko who did not diagnose Respondent with any psychological disorders. However, Dr. Briones-Coleman had already opined that Respondent did not have any psychological disorders causing his mental changes. (See Factual Finding 3(d).) Respondent did not provide any medical evaluation contradicting Dr. Briones-Colman's opinion that Respondent was likely suffering from mild to moderate dementia. Respondent asserted that he has scheduled a psychological re-evaluation on September 28, 2016.

7. Respondent provided no expert declarations contradicting Dr. Briones-Coleman's opinion that, due to Respondent's impairments, he is currently unable to practice medicine safely.

8. The evidence established that, due to Respondent's physical (hearing) and cognitive impairments, Respondent is currently unable to practice medicine safely, and permitting Respondent to continue practicing medicine will endanger the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. Respondent is subject to an Interim Order of Suspension pursuant to Government Code section 11529 in that Respondent is currently unable to practice medicine safely.

2. Permitting Respondent to continue practicing medicine will endanger the public health, safety and welfare. The Board is not required to wait until patient harm occurs before taking steps to protect the public. (*In Re Kelley* (1990) 52 Cal.3d 487, 495.)

3. There is a reasonable probability that Petitioner will prevail in the underlying action.

4. The likelihood of injury to the public in not issuing the Order below outweighs the likelihood of injury to the licensee in issuing the Order.

5. Based on the evidence and the argument presented, the issuance of an Interim Order of Suspension is warranted at this time.

//

ORDER

1. The Petition for Interim Order of Suspension is granted.

2. Physician's and Surgeon's Certificate Number A36092, issued to Respondent, Edward Bui Hai, M.D., is hereby suspended pending a full administrative determination of Respondent's fitness to practice medicine.

3. Respondent shall not:

a. Practice or attempt to practice any aspect of medicine in California until the final decision of the Board following an administrative hearing;

b. Be present in any location which is maintained for the purpose of practicing medicine, except as a patient;

c. Advertise, by any means, or hold himself out as practicing or available to practice medicine.

DATED: September 26, 2016

DocuSigned by:
Julie Cabos-Owen
18238F650E5B402...

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings